

**LASSEN SUPERIOR COURT
DEPARTMENT ONE
TENTATIVE RULINGS**

November 15, 2010

Hon. F. Donald Sokol, Presiding

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(NOTE TO COUNSEL AND PARTIES: The court provides tentative rulings on law and motion matters only for information to the parties in preparation for the hearing. The court does NOT issue tentative rulings pursuant to California Rule of Court 3.1308, and the procedure set out in that Rule does not apply.)

[Record Disclosures by Judge Sokol: Ms. Donna Talley is a court Guardianship/Conservatorship Investigator. Ms. Nina Dupont-Stone, M.A. is a court Child Custody Recommending Counselor. Ms. Diane Tetreault, M.A. is a court Child Custody Recommending Counselor. Mr. Jon Nakanishi is the court Family Law Facilitator.]

8:00 CALENDAR

#36603

**Barney, Cindy v. Barney, Alan
Trial Setting Conference**

At the time of review the Respondent had not complied with Local Rule 1, subparagraph 7. If the Rule is not complied with by the date of the hearing the matter will go off calendar but if the Rule is complied with the court will set a trial date in accordance with the respective calendars of court and counsel.

#45170

**Mills, Brandy v. Mills, Rudy
Motion re Modification of Custody and Visitation**

The parties will be referred to Child Custody Recommending Counseling to determine whether an agreement can be reached, to return to court at 4:00 p.m. If no agreement is reached the court will either accept the

recommendation of the counselor or set the matter for an evidentiary hearing.

#FL50433

**Horrell, Evelyn v. Faust, Bradley
Motion re Modification of Custody**

Respondent was served with the motion of Petitioner on October 27, 2010, 15 court days before the hearing date. Code of Civil Procedure section 1005b requires a notice to be served on the non-moving party at least 16 court days before the hearing date. Therefore the service is defective by one day. If Respondent appears and waives the service defect the parties will be referred to Child Custody Recommending Counseling to determine whether an agreement can be reached, to return to court at 4:00 p.m. If no agreement is reached the court will either accept the recommendation of the counselor or set the matter for an evidentiary hearing.

#FL50440

**Peay, Leslie v. Peay, John
Motion re Modification of Spousal Support**

The court will grant the motion of Respondent, to which the Petitioner agrees in a Responsive Declaration, an Order Nunc Pro Tunc as of the date of the judgment, August 31, 2010, that the Respondent pay no spousal support to Petitioner.

#FS48385

**Larimer, Denise v. Larimer, Jason
Motion re Bifurcation**

Family Code section 2337 requires a Preliminary Declaration of Disclosure with a completed Schedule of Assets and Debts to be served on the non-moving party, unless served previously, and that any party's retirement plan be joined as a party. At the time of review the Preliminary Declaration of Disclosure had not been filed nor had the issue of retirement plans been addressed. If these documents have not been filed by the date of the hearing the matter will be taken off calendar.

#FL48713

**Anderson, Angela v. Anderson, George
Request to Set Aside Child Support Order**

The Application to set aside the Support Order of July 1, 2010 will be denied for the following reasons:

1. With respect to the fraud allegation, Petitioner listed her roommate, Mr. Sgarlata, on her Income and Expense Declaration and also listed his children. Her use of her former name on social networking sites is irrelative. Evidence of the Mendocino County Income Withholding Order on Respondent regarding his children from a prior marriage fails to support an allegation of fraud. The IWO was filed on March 5, 2010 and is based on an order entered September 9, 2009.

2. With respect to the perjury charge, see above regarding the alleged fraud.

3. Regarding notice, Petitioner has filed a proof of service by mail regarding the motion for spousal support stating the document was mailed on April 8, 2010. It was mailed to Respondent's address of record at the time. The Lassen County Sheriff's Department personally served Respondent with the Family Law Summons and Petition for Dissolution on the May 15, 2009. The court thereby obtained personal jurisdiction over Respondent. California Code of Civil Procedure section 410.50 deems personal service of a summons equivalent to a general appearance. Thereafter service by mail was permissible. Petitioner served Respondent at his last known place of residence in accordance with Code of Civil Procedure section 1013(a).

#FL51218

Matthews, Rose v. Kellogg, Brandon

Order to Show Cause re Custody and Visitation

The Order to Show Cause for Custody and Visitation was personally served on the Respondent Brandon Kellogg on October 24, 2010 at his residence in Hawaii. However, the hearing date on the Order to Show Cause was changed from November 18, 2010 to November 15, 2010 and there is nothing in the file to show that the Respondent was advised of the change in the date of the hearing. Therefore if the Respondent does not appear and waive the service defect the court will continue the matter to December 13, 2010 at 8:00 a.m. to allow time for Petitioner to advise Respondent of the new hearing date and allow time for Respondent to appear at the hearing.

#FS50717

Purvis, Jamilyn v. Angel, Charles

Report of Child Custody Recommending Counselor

The parties have been mediating with the Child Custody Recommending Counselor but the court has been advised that no agreement has been reached and a continuance is requested by the counselor for time to prepare a recommendation. The court will therefore grant the request of the counselor and continue the matter to December 6, 2010 at 4:00 p.m.

1:30 CALENDAR

#50085

Korn, Allen v. Spencer, Eileen

Motion re Order that Requests for Admissions be Deemed Admitted and for Monetary Sanctions

The motion to have the Request for Admissions be deemed admitted will be granted for the following reasons:

1. Even though Defendant Eileen Spencer has asserted she responded on August 13, 2010, the responses were not in proper form but more importantly not verified. An unverified response is ineffective and equivalent to no response at all (*Appleton v. Superior Court* (1988) 206 Cal.App.3rd 632, 636.) On September 17, 2010 Ms. Spencer acknowledged by email that she would put the discovery response in proper form but did not do so.

2. The response of Ms. Spencer that the request for admissions were covered in the case management statement set forth in an email to Plaintiff on September 17, 2010 must fail for lack of being in proper form and unverified. Monetary sanctions are mandatory for any party's failure to serve a timely response and such failure necessitates the filing of a "deemed admitted" motion. (CCP section 2033.280(c))

Sanctions are granted in the amount \$123.50 (\$40.00 filing fee, \$65.00 court call expense, and \$18.50 for postage and copying). Plaintiff's request that sanctions be increased to \$143.50 is denied for reason that payment information attached to the reply is not supported by declaration.

#50766

State of California v. Dupraz, Terry
Trial Setting

Opposition to forfeiture has been served on the District Attorney in accordance with the proof of service filed October 25, 2010. The court expects a Petition for Forfeiture will now be filed by the District Attorney so the matter will be continued until December 13, 2010 at 1:30 p.m. for a trial setting conference.

#LPS0045

**Conservatorship of Brisco, William
Petition re Termination of Conservatorship**

In accordance with Probate Code sections 1460 and 1510 certain relatives within the second degree entitled to notice but not given notice are John Brisco, Lola Stout, Tammy Brisco, Tommy Brisco, and Heather Vial. Since the whereabouts of Lola Stout, Tammy Brisco and Tommy Brisco are unknown, according to the petition, the court will dispense with notice to them. The court will also dispense with notice to Heather Vial since she is under the care of the Public Guardian. The court will continue the matter until December 13, 2010 at 1:30 p.m. to allow notice to be given to John Brisco and any other relatives within the second degree.

#P6044

**Conservatorship of Campbell, Ronald
Biennial Review and Accounting**

The court has reviewed the investigator's report and finds the Conservatorship continues to be necessary and shall continue, that Conservators are acting in Conservatee's best interests, and therefore their actions are approved. The current placement shall be retained. The clerk shall give notice of the next review hearing.

#P6773

**Conservatorship of Altuz, Benjamin
Biennial Review**

The court has reviewed the court investigator's report and finds that all acts and transactions of the Conservator were in the best interest of Conservatee and are approved. The Conservatorship shall continue. The court will direct the clerk to give notice of the next review hearing.

#P7810

Conservatorship of Niemeyer, Elsa

Six Month Review

The court has reviewed the investigator's report and finds the Conservatorship is still necessary and proper. Public Guardian should continue to act with all powers previously granted. The court appointed Mr. Hill to represent the Conservatee and can assist the Conservatee to file a proper petition for termination of Conservatorship if he finds it is in her best interest. The court approves the recommendation of the court investigator and will direct the clerk to send notice of the next review date.

4:00 CALENDAR

#DV51158

Jones, Erin v. Maxfeldt, Jason

Report of Child Custody Recommending Counselor re Custody and Visitation

At the time of review the court had not received a report from the Child Custody Recommending Counselor as to whether the parties have reached an agreement. At the hearing the court will receive either the agreement of the parties for execution by the court, the recommendation of the counselor, or set the matter for an evidentiary hearing.